# CITY OF BESSEMER
# WRITTEN PUBLIC SUMMARY OF FOIA PROCEDURES AND GUIDELINES

Consistent with Public Act 563 of 2014 amending the Michigan Freedom of Information Act (FOIA), the following is the Written Public Summary of the City's FOIA Procedures and Guidelines relevant to the general public.

**1. How do I submit a FOIA request to the City of Bessemer?**

- Requests to inspect or obtain copies of public records prepared, owned, used, possessed or retained by the City of Bessemer must be submitted in writing.
- A request must sufficiently describe a public record so as to enable the City to find it.
- No specific form to submit a written request is required. However a FOIA Request form for your use and convenience is available on the City's website at www.cityofbessemer.org
- Written requests can be made in person by delivery to any City office in person or by mail.
- Requests can also be made by facsimile by calling 906-663-4311. o A request may also be submitted by e-mail. To ensure a prompt response, e-mail requests should contain the term "FOIA" or "FOIA Request" in the subject line and be sent to Samantha.z@cityofbessemer.org.

*Note: If you are serving a sentence of imprisonment in a local, state or federal correctional facility you are not entitled to submit a request for a public record.*

**2. What kind of response can I expect to my request?**

- Within 5 business days of receipt of a FOIA request the City will issue a response. If a request is received by facsimile or e-mail the request is deemed to have been received on the following business day. The City will respond to your request in one of the following ways:

    - Grant the request.
    - Issue a written notice denying the request.
    - Grant the request in part and issue a written notice denying in part the request.
    - Issue a notice indicating that due to the nature of the request the City needs an additional 10 business days to respond.
    - Issue a written notice indicating that the public record requested is available at no charge on the City's website.

- If the request is granted, or granted in part, the City will ask that payment be made for the allowable fees associated with responding to the request before the public record is made available. If the cost of processing the request is expected to exceed $50, or if you have not paid for a previously granted request, the City will require a deposit before processing the request.

**3. What are the City's fee deposit requirements?**

- If the City has made a good faith calculation that the total fee for processing the request exceeds $50.00, the City will require that you provide a deposit in the amount of 50% of the total estimated fee. When the City requests the deposit it will provide you a non-binding best efforts estimate of how long it will take to process the request following receipt by the City of your deposit.

- If the City receives a request from a person who has not paid the City for copies of public records made in fulfillment of a previously granted written request, the City will require a deposit of 100% of the estimated processing fee before it begins to search for the public record for any subsequent written request when all of the following conditions exist:
    - the final fee for the prior written request is not more than 105% of the estimated fee;
    - the public records made available contained the information sought in the prior written request and remain in the City's possession;
    - the public records were made available to the individual, subject to payment, within the time frame estimated by the City to provide the records;
    - 90 days have passed since the City notified the individual in writing that the public records were available for pickup or mailing;
    - the individual is unable to show proof of prior payment to the City; and
    - the City has calculated an estimated detailed itemization that is the basis for the current written request's increased fee deposit.

- The City will not require the 100% estimated fee deposit if any of the following apply:
    - the person making the request is able to show proof of prior payment in full to the City;
    - the City is subsequently paid in full for all applicable prior written requests; or
    - 365 days have passed since the person made the request for which full payment was not remitted to the City.

**4. How does the City calculate FOIA processing fees?**

- A fee will not be charged for the cost of search, examination, review and the deletion and separation of exempt from nonexempt information unless failure to charge a fee would result in unreasonably high costs to the City because of the nature of the request in the particular instance, and the City specifically identifies the nature of the unreasonably high costs.

- The Michigan FOIA statute permits the City to assess and collect a fee for six designated processing components. The City may charge for the following costs associated with processing a request:

    - Labor costs associated with searching for, locating and examining a requested public record.
    - Labor costs associated with a review of a record to separate and delete information exempt from disclosure of information which is disclosed.
    - The cost of computer discs, computer tapes or other digital or similar media when the requester asks for records in non-paper physical media.
    - The cost of duplication or publication, not including labor, of paper copies of public records.
    - Labor costs associated with duplication or publication, which includes making paper copies, making digital copies, or transferring digital public records to nonpaper physical media or through the Internet.
    - The cost to mail or send a public record to a requestor.

- Labor Costs
    - All labor costs will be estimated and charged in 15 minute increments with all partial time increments rounded down.

- Labor costs will be charged at the hourly wage of the lowest-paid City employee capable of doing the work in the specific fee category, regardless of who actually performs work.
- Labor costs will also include a charge to cover or partially cover the cost of fringe benefits.

- Non-paper Physical Media
  - The cost for records provided on non-paper physical media, such as computer discs, computer tapes or other digital or similar media will be at the actual and most reasonably economical cost for the non-paper media.
  - This cost will only be assessed if the City has the technological capability necessary to provide the public record in the requested non-paper physical media format.

- Paper Copies
  - Paper copies of public records made on standard letter (8 ½ x 11) or legal (8 ½ x 14) sized paper will not exceed $.10 per sheet of paper. Copies for non-standard sized sheets will paper will reflect the actual cost of reproduction.
  - The City may provide records using double-sided printing, if cost-saving and available.

- Mailing Costs
  - The cost to mail public records will use a reasonably economical and justified means.
  - The City may charge for the least expensive form of postal delivery confirmation.
  - No cost will be made for expedited shipping or insurance unless requested.

**5. How do I qualify for a reduction of the processing fees?**

- The City may waive or reduce the fee associated with a request when City determines that to do so is in the public interest because release of the information is considered as primarily benefitting the general public.

- The City will waive the first $20.00 of the processing fee for a request if you submit an affidavit stating that you are:
  - indigent and receiving specific public assistance; or
  - if not receiving public assistance, stating facts demonstrating an inability to pay because of indigency.

- You are not eligible to receive the $20.00 waiver if you:
  - have previously received discounted copies of public records from the City twice during the calendar year; or
  - are requesting information on behalf of other persons who are offering or providing payment to you to make the request.

- An affidavit is sworn statement. For your convenience the City has provided an Affidavit of Indigency form for the waiver of FOIA fees on its website.

- The City will waive the fee for an nonprofit organization which meets all of the following conditions:
  - the organization is designated by the State under federal law to carry out activities under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 and the Protection and Advocacy for Individuals with Mental Illness Act;

- the request is made directly on behalf of the organization or its clients;
- the request is made for a reason wholly consistent with the provisions of federal law under Section 931 of the Mental Health Code; and
- the request is accompanied by documentation of the organization's designation by the State

**6. How may I challenge the denial of a public record or an excessive fee?**

○ Appeal of a Denial of a Public Record

If you believe that all or a portion of a public record has not been disclosed or has been improperly exempted from disclosure, you may file an appeal of the denial with the Office of the Mayor. The appeal must be in writing, specifically state the word "appeal" and identify the reason or reasons you are seeking a reversal of the denial.

Within 10 business days of receiving the appeal the Mayor will respond in writing by:

- reversing the disclosure denial;
- upholding the disclosure denial; or
- reverse the disclosure denial in part and uphold the disclosure denial in part.

Whether or not you submitted an appeal of a denial to the Mayor, you may file a civil action in Bessemer County Circuit Court within 180 days after the City's final determination to deny your request. Should you prevail in the civil action the court will award you reasonable attorneys' fees, costs and disbursements. If the court determines that the City acted arbitrarily and capriciously in refusing to disclose or provide a public record, the court shall award you damages in the amount of $1000.00

○ Appeal of an Excessive FOIA Processing Fee

If you believe that the fee charged by the City to process your FOIA request exceeds the amount permitted by state law, you must first submit a written appeal for a fee reduction to the Office of the Mayor. The appeal must be in writing, specifically state the word "appeal" and identify how the required fee exceeds the amount permitted.

Within 10 business days after receiving the appeal, the Mayor will respond in writing by:

- waiving the fee;
- reducing the fee and issue a written determination indicating the specific basis that supports the remaining fee;
- upholding the fee and issue a written determination indicating the specific basis that supports the required fee; or
- issuing a notice detailing the reason or reasons for extending for not more than 10 business days the period during which the Mayor will respond to the written appeal.

Within 45 days after receiving notice of the Mayor's determination of the processing fee appeal, you may commence a civil action in Bessemer County Circuit Court for a fee reduction. If you prevail in the civil action by receiving a reduction of 50% or more of the total fee, the court may award all or appropriate amount of reasonable attorneys' fees, costs and disbursements. If the court determines that the City acted arbitrarily and capriciously by charging an excessive fee, court may also award you punitive damages in the amount of $500.00.

**Need more details or information?**

This is only a summary of the City of Bessemer's FOIA Procedures and Guidelines. For more details and information, copies of the City of Bessemer's FOIA Procedures and Guidelines are available at no charge at any City office and on the City's website, www.cityofbessemer.org/foia/